Filed 10/19/12 In re M.V. CA6

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

In re M.V., a Person Coming Under the Juvenile Court Law.	H037611 (Santa Cruz County Super. Ct. No. DP002472)
SANTA CRUZ COUNTY HUMAN SERVICES DEPARTMENT, Plaintiff and Respondent, v. L.V., Defendant and Appellant.	

In this appeal of the juvenile court's jurisdictional order, the mother of a dependent child argues that the juvenile court failed to obtain a knowing, intelligent, and voluntary waiver of her trial rights. She also contends that there was insufficient evidence to support the court's jurisdictional findings.

We conclude, on this record, that the mother did not submit on the issue of jurisdiction at the contested jurisdiction hearing. The juvenile court was therefore not required to obtain a waiver of trial rights as a part of that hearing. We also find substantial evidence supporting the court's order on jurisdiction, and will affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant L.V. (Mother) is the mother of M.V. (Child), a boy who was 15 years old at the time of the proceedings at issue. Child's father is deceased.

Beginning in early 2011, Child lived with a friend and his friend's mother (T.B.) because Mother was homeless, unemployed, undergoing treatment for breast cancer, and disabled from a motorcycle accident. Mother received income of at least $800 per month in Social Security disability payments.[1] Mother was staying on the couch of elderly friends, who would not permit Child to stay in their home. Mother had suggested at that time that Child sleep in her car. By the end of May 2011, T.B. had received little financial contribution from Mother and could no longer afford to provide for Child. T.B. contacted the Santa Cruz County Human Services Department (the Department), and on June 8, 2011, Child was taken into protective custody and placed in a group home.

The Department filed a petition on Child's behalf under section 300 of the Welfare and Institutions Code.[2] The petition alleged serious physical harm, failure to protect, and failure to provide support (§ 300, subds. (a), (b), (g)). On June 13, 2011, the court conducted a detention hearing, at which time it appointed counsel for Mother and Child. Mother denied the allegations of the petition. The court found that a prima facie showing had been made that continuing Child in Mother's care would be contrary to Child's welfare. The court ordered Child detained, with temporary placement under the care and supervision of the Department, pending disposition or other order of the court. The court ordered supervised visitation and set the matter for further hearing.

In its July 2011 jurisdiction/disposition report to the court, the Department recommended that Child be declared a dependent, that he remain in out-of-home care,

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[1] The record was inconsistent regarding Mother's monthly income, with reports of $800 in Social Security disability and other reports of $1,100 income.

[2] Further statutory references are to the Welfare and Institutions Code.

that family reunification services be provided to Mother, and that the court order a psychological evaluation of Mother.

At the initial jurisdiction and disposition hearing on July 12, 2011, Mother disagreed with the Department's recommendations and requested a settlement conference. After the parties were unable to reach an agreement at the settlement conference on August 16, 2011, the court set the case for a contested hearing on September 20, 2011. The court set dates for the exchange of discovery and witness lists, and Mother filed written objections to hearsay evidence in the social worker's report (§ 355, subd. (c)).

At the start of the September 20 hearing, the court announced that the matter was "set for a contested hearing" regarding jurisdiction and disposition and asked whether the parties had resolved any issues. Counsel for the Department stated, "[M]y understanding is that there will be merely argument." Counsel for the Department and for Mother advised the court that the Department would modify the allegations of the petition and Mother would withdraw her hearsay objections. The modifications consisted of striking all allegations of serious physical harm under section 300, subdivision (a), and amending the allegations under section 300, subdivision (b), as italicized below.

As modified, the petition alleged in paragraph b-1 that Child:

> "has suffered or there is substantial risk that he will suffer, serious physical harm . . . by the willful or negligent failure of [Mother] to provide [Child] with adequate shelter. . . . [Mother] is currently homeless and is couch surfing with friends who will not allow [Child] to stay in their home. Therefore [Mother] expects [Child] to sleep in her car, and believes [it is] his responsibility to find his own place to live. *Between January and May 2011*, [Mother] refused housing assistance . . . because she did not consider it 'a good enough' situation, and blames [Child] for their homeless situation."

Paragraph g-1 of the petition alleged that Child has been left without provision for support, since his "previous caretaker is no longer able or willing to provide care

> or support for him, and [Mother] does not have a reasonable plan [for] his living arrangement."

The petition alleged in paragraph b-2 that in May 2011,

> "while Mother was driving [Child] to a medical appointment [Mother] hit [Child] in the head and the arm whereupon he jumped out of the slowly moving vehicle. A few days later[,] Mother engaged in an argument with [Child] and when [Child] got out of the car[,] [Mother] accelerated behind him, frightening him. [Mother's] violent and aggressive behaviors place [Child] at substantial risk of further serious physical harm."

Paragraphs b-3 and b-4 of the petition alleged that Mother was unable to provide regular care for Child due to problems relating to her mental health and substance abuse:

> "[Mother] has displayed irrational and erratic behaviors as demonstrated by driving to [Child's] previous living arrangement and throwing [Child's] clothing all over the driveway. [Mother] has also made comments to [Child] such as 'someone should take you out into the woods and teach you a lesson' and 'I should have aborted you.' " "[Mother] consumes alcohol and smokes *medical* marijuana on a daily basis."

Mother's counsel informed the court that "Mother is not submitting, but we are not going to present evidence." Mother's counsel stated that Mother was "working very intensively to obtain housing" "with two separate agencies" and the social worker. Regarding the alleged substance abuse, Mother's counsel argued that Mother "has a medical marijuana card because of her medical condition." Mother's counsel said, "We are hopeful that the Court will consider her comment while making a decision today. We still are not submitting. My client denies the allegation, but like I said, we are not going to produce evidence."

Mother's counsel also stated, "On disposition[,] mother is submitting. She is engaged in services and is looking forward to participate and complete [*sic*] the case plan. She's especially hopeful for joint sessions of counseling and visitation. [¶] . . . She is

willing to participate and reunify with her son." Counsel stated that Mother "is willing to continue participating in all the decisions and being told about medical appointments[3] as well as educational issues for [Child]. By the way, she is in touch with the group home, with his school, and will continue. This is part of her case plan. She [is] participating in [Child's] life. With this comment we are submitting on the petition."

After hearing comments from Child's attorney and speaking with Child about his interest in guitar, the court referenced a private fund for enrichment activities for dependent children and suggested Child talk to his attorney and the social worker about applying for a grant to purchase a guitar and guitar lessons. The court talked to Child about school and told him he needed "to start having some conversations" with Mother and his high school counselor about his education and his educational plans after high school. Child, who was still in the group home, told the court he had a friend who offered his home as a placement option and the court directed him to explore that option with the social worker.

The court asked Mother's counsel, "[A]nything further?" Counsel responded, "Your Honor, like I said, we are not going to introduce evidence. [¶] . . . . [¶] [Mother] was hopeful that the Court will not find the petition true, but she is agreeing to the

[3] Earlier that day, the court heard the Department's request for an order permitting Child to attend a medical consultation with a hand specialist at Stanford University over Mother's objections. Child had injured a finger and there was some question whether he required surgery. Mother objected on the grounds that she was unavailable to attend the consultation because of her own medical appointment and wanted Child to see a different physician. The Department and Child's attorney argued that given the nature of the injury, time was of the essence; that it would take too long to obtain another appointment; and that it was a consultation and did not involve treatment. The court ordered Child to attend the consultation over Mother's objections. At the jurisdictional hearing, Mother's counsel reported that the specialist did not think Child required surgery and stated that Mother was "very happy" that Child did not have a serious medical condition.

changes of the language. And with these comments, I will submit to the court." Mother's counsel added that Mother was available for a psychological evaluation.

The court sustained the allegations of the petition, found that Child was described by section 300, and assumed jurisdiction over Child. On the issue of disposition, the court ordered Child removed from Mother's custody and placed him under the care, custody and control of the Department. The court ordered reunification services for Mother, including weekly visitation, and referred Mother for evaluation by a court-appointed psychologist.

DISCUSSION

Mother contends that the jurisdictional order must be reversed because (1) the court accepted a submission without obtaining Mother's knowing, intelligent, and voluntary waiver of trial rights, and (2) there is insufficient evidence to support the court's finding of jurisdiction.

1. Advisement and Waiver of Trial Rights

"A dependency proceeding is civil in nature and is designed not to prosecute the parent, but to protect the child. [Citation.] Nevertheless, a parent's fundamental right to care for and have custody of her child is implicated and may not be interfered with without due process of law. [Citations.] Among the essential ingredients of due process are the right to a trial on the issues raised by the petition, the right to confront and cross-examine witnesses, and to compel the attendance of witnesses. By adopting rule [5.682], the Judicial Council recognized these rights are essential to a fair jurisdictional proceeding." (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1376-1377 (*Monique T.*), citing *In re Malinda S.* (1990) 51 Cal.3d 368, 383-384 & fn. 17, superseded by statute on another ground as stated in *People v. Otto* (2001) 26 Cal. 4th 200, 207; see Historical Notes, 23 Pt. 2, West's Ann. Court Rules (2006 ed.) foll. rule 5.682, p. 97 [former

rule 1449, cited in *Monique T.*, was renumbered rule 5.682].) A parent must be advised of these rights at the initial stages of the proceedings. (Cal. Rules of Court, rule 5.534(k)[4]; all further rules citations are to the Cal. Rules of Court.)

Uncontested Jurisdiction Hearings

A parent may personally waive a contested hearing on the jurisdictional issues in a dependency proceeding by admitting the allegations of the petition, pleading no contest, or submitting the determination to the court. (Rule 5.682(d), (e); *Monique T.*, *supra*, 2 Cal.App.4th at p. 1377 [juvenile court, not attorney, must explain rights; parent must personally waive trial rights; attorney cannot waive for parent].) When accepting an admission, a no contest plea, or a submission, the juvenile court must advise the parent of his or her due process rights and obtain a knowing and intelligent waiver from the parent.[5] (Rule 5.682(b), (c), (f); *In re Patricia T.* (2001) 91 Cal.App.4th 400, 404.)

The Judicial Council has adopted form JV-190 entitled "Waiver of Rights – Juvenile Dependency" for courts to use in taking admissions, no contest pleas, and

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[4] Rule 5.534(k)(1) provides generally that in section 300 cases "[t]he court must advise the child, parent, and guardian . . . of the following rights: [¶] (A) Any right to assert the privilege against self-incrimination; [¶] (B) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioner and the witnesses called to testify at the hearing; [¶] (C) The right to use the process of the court to bring in witnesses; and [¶] (D) The right to present evidence to the court."

[5] Rule 5.862(b) requires the court at a jurisdictional hearing to advise the parent of: "(1) The right to a hearing by the court on the issues raised by the petition; [¶] (2) The right to assert any privilege against self-incrimination; [¶] (3) The right to confront and to cross-examine all witnesses called to testify; [¶] (4) The right to use the process of the court to compel attendance of witnesses on behalf of the parent or guardian; and [¶] (5) The right, if the child has been removed, to have the child returned to the parent . . . within two working days after a finding by the court that the child does not come within the jurisdiction of the juvenile court under section 300, unless the parent . . . and the child welfare agency agree that the child will be released on a later date."

submissions. Paragraph 4 of the form, entitled "Waiver of Rights" contains a list of the trial rights set forth in rules 5.534(k)(1) and 5.682(b), with boxes for the parent to initial, indicating that the parent is "giving up" each of those rights. Paragraph 5 of the form contains boxes for the parent to initial, indicating that he or she understands the consequences of the admission, no contest plea, or submission. Paragraph 7 of the form requires the parent's attorney to declare that he or she has explained the rights and consequences of an admission, no contest plea, or submission to the parent. Since Mother denied the allegations of the petition and requested a contested hearing, form JV-190 was not used in this case.

After the parent has admitted the allegations of the petition, pleaded no contest, or submitted on the social worker's report, rule 5.682(f) requires the court to make specific findings, including as to the knowing and intelligent waiver of trial.[6]

Contested Jurisdiction Hearings

If the parent denies the allegations of the petition, as Mother did here, the court must hold a contested hearing to determine whether the allegations of the petition are true. (§ 355; rule 5.684(a).) The rules governing contested hearings on section 300 petitions are set forth in rule 5.684. Unlike rule 5.682, which requires the court to advise

[6] Rule 5.682(f) provides in relevant part: "After admission, plea of no contest, or submission, the court must make the following findings noted in the order of the court: . . . (3) The parent . . . has knowingly and intelligently waived the right to a trial on the issues by the court, the right to assert the privilege against self-incrimination, and the right to confront and to cross-examine adverse witnesses and to use the process of the court to compel the attendance of witnesses on the parent['s] . . . behalf; (4) The parent . . . understands the nature of the conduct alleged in the petition and the possible consequences of an admission, plea of no contest, or submission; (5) The admission, plea of no contest, or submission by the parent . . . is freely and voluntarily made; (6) There is a factual basis for the . . . admission; (7) Those allegations of the petition as admitted are true as alleged; and (8) The child is described under one or more specific subdivisions of section 300." (Rule 5.682(f), paragraph breaks omitted.)

of trial rights and obtain a waiver before accepting an admission, no contest plea, or submission, rule 5.684 does not require a separate advisement of trial rights at a *contested* hearing on jurisdiction. This makes sense: When parents request and go forward with a contested jurisdiction hearing, they are by definition exercising their trial rights.

Standard of Review

Citing *In re Patricia T.*, *supra*, 91 Cal.App.4th at pages 404-405, Mother asserts that "[a] waiver of trial rights in a dependency case is reviewed for an affirmative showing that the waiver is voluntary and intelligent under the totality of the circumstances." As we shall explain, resolution of this issue turns on whether Mother submitted on the question of jurisdiction. Since this is essentially a factual matter, we apply the substantial evidence standard of review.

Analysis

Mother argues that the juvenile court was required to advise her of her trial rights and obtain a waiver because "[t]here was a submission in [M]other's case." She argues that "at times counsel described what was occurring as a submission and at times as not a submission. In fact, however, it was a submission in that [Mother] offered neither evidence nor any meaningful argument in opposition to the jurisdictional allegations."

We disagree with Mother's basic premise that what occurred here was a submission. At the detention hearing on June 13, 2011, Mother denied the allegations of the petition. The written order for the detention hearing indicates that Mother was advised of her trial rights at that time.[7] The court set the matter for a jurisdiction hearing

[7] Mother argues that the court "did not personally advise [her] or take an oral waiver from [her] at either the detention hearing or jurisdictional hearing." Mother has not provided this court with a reporter's transcript of the detention hearing. The court's written order for the detention hearing states that the parties were properly advised of their rights pursuant to section 316 (right to be represented by counsel) and rules 5.668

on July 12, 2011, and ordered the Department to lodge its report with the court one week before that date.

The case returned to court three times on the issue of jurisdiction. At the initial hearing on July 12, 2011, Mother disagreed with the Department's recommendation that Child be declared a dependent of the court in out-of-home placement and requested a settlement conference. Nothing in the record suggests that Mother admitted any of the jurisdictional allegations of the petition, pleaded no contest, or submitted on the report at that time.

At the settlement conference on August 16, 2011, the parties were unable to resolve jurisdictional issues, and the court set a "contested hearing" for September 20, 2011. The court also established deadlines for the exchange of discovery and witness lists and concluded the hearing by stating, "So we're set for trial." As before, nothing in the record of the settlement conference suggests that Mother made any admissions, pleaded no contest, or submitted on the report at that time. In preparation for the contested hearing, Mother filed written evidentiary objections to the social worker's report.

At the beginning of the third hearing on September 20, 2011, which is described in the minute order as a "Contested Hearing on Jurisdiction and Disposition," the court stated, "We are here for the hearing regarding jurisdiction and disposition. It's set for a contested hearing." The court next inquired whether the parties had "resolved any issues along the way." Counsel for the Department told the court that the Department had agreed to amend the petition and that Mother had agreed to withdraw her evidentiary objections to the social worker's report. The amendments to the petition were stated for

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and 5.670. Rule 5.668(a) requires that parents be advised of their rights in accordance with rule 5.534. And as we have noted, rule 5.534(k) provides for the advisement of the parties' due process rights. Thus, the record supports the conclusion that Mother was advised of her trial rights at the detention hearing.

the record and the court confirmed Mother's agreement to withdraw her hearsay objections. Counsel for the Department asked the court to admit the social worker's report and an addendum into evidence. The social worker who prepared the report was present at the contested hearing and remained available for cross-examination.

Mother's counsel stated, "[Mother] is not submitting, but we are not going to present evidence." Thus, Mother's counsel made it clear that although the parties had stipulated to the amendment of the petition and she had withdrawn her evidentiary objections, Mother was not submitting on the petition. Counsel next presented arguments to the court regarding Mother's efforts to obtain housing and Mother's medicinal marijuana use. Both arguments addressed jurisdictional allegations in the amended petition. Mother's counsel concluded her argument on jurisdiction by reiterating, "We still are not submitting. My client denies the allegation, but like I said, we are not going to produce evidence."

Mother contends that in spite of her counsel twice telling the court that Mother was not submitting, what occurred at the contested hearing was in fact a submission because counsel's argument focused on agreed upon amendments to the petition. We are not persuaded. Mother does not cite any legal authority for the proposition that whether a submission occurred depends on the quality or scope of counsel's argument. The juvenile court must be able to rely on counsel's express representations that Mother was not submitting her case; the court should not be required to assess the nature of counsel's argument to determine whether a submission was actually intended. That Mother elected not to present any evidence or cross-examine the social worker, does not mean she did not exercise her trial rights.

Mother's reliance on *Monique T.* is misplaced. In that case, the mother's attorney told the court at the jurisdiction hearing that the mother waived reading of the petition and advisement of rights and was prepared to submit on the petition. The attorney also told the court that she had explained the mother's trial rights to her client and that she

was satisfied that the mother understood both her trial rights and the consequences of a submission. The juvenile court found that the mother understood her rights and had voluntarily waived them. The appellate court concluded that "it was error to accept a waiver of [the mother's due process] rights based only on counsel's representations" and held that the court should have explained the rights to the mother and obtained her personal waiver. (*Monique T. supra*, 2 Cal.App.4th at p. 1377.) This case is distinguishable from *Monique T.* because Mother did not submit on the petition and she exercised her trial rights by going forward with the contested hearing.

Mother argues that what occurred at the September 20 hearing should be construed as a submission since her counsel stated both that she was submitting and that she was not submitting. However, the reporter's transcript confirms that counsel's statements were not inconsistent, as the case was set for hearing on both jurisdiction and disposition. In contrast to counsel's multiple statements about not submitting on jurisdiction, and after making arguments on those issues, Mother's counsel stated, "On disposition[, M]other is submitting." At the end of the contested hearing, counsel stated, "[Mother] was hopeful that the Court will not find the petition true, but she is agreeing to the changes of the language. And with these comments, I will submit to the Court." It appears from this record that Mother had elected to submit on issues of disposition, in the event the court ruled against her on jurisdiction. This does not mean that she was also submitting on jurisdiction, and Mother's counsel clearly reiterated that position. Counsel's concluding sentence quoted here was simply a signal that she had completed her argument.

Our decision should not be construed as limiting a parent's right to change course and admit the allegations of the petition, plead no contest, or submit on the social worker's report at any time during a contested hearing. But that is not what occurred here. Mother's counsel made it clear that Mother was not submitting on jurisdiction, and the court was entitled to rely on those representations.

The record of the contested hearing on jurisdiction and disposition supports the conclusion that Mother exercised her trial rights at the hearing. The juvenile court was, therefore, not required to advise Mother and obtain a waiver of those very rights.

2. Sufficiency of the Evidence to Support the Jurisdictional Findings

The court sustained the amended petition on the basis of section 300, subdivisions (b) and (g). Subdivision (b) provides in relevant part that the court may find a child to be a dependent of the court when the "child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his . . . parent . . . to adequately supervise or protect the child, . . . or by the willful or negligent failure of the parent . . . to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent . . . to provide regular care for the child due to the parent's . . . mental illness, . . . , or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family." Subdivision (g) of section 300 provides in relevant part that a child may be found a dependent of the court if the "child has been left without any provision for support; . . ." The allegations of the petition focused on Child's lack of shelter and support, arguments between Mother and Child, Mother's erratic behavior, and her use of alcohol and marijuana.

"The basic question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm." (*In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1134.) "Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300" at the jurisdiction hearing. (§ 355, subd. (a).) "When a dependency petition alleges multiple grounds for its assertion that a minor comes within the dependency court's jurisdiction, a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by

substantial evidence. In such a case, the reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence." (*In re Alexis E*. (2009) 171 Cal.App.4th 438, 451.)

Standard of Review

"On appeal, the 'substantial evidence' test is the appropriate standard of review for both the jurisdictional and dispositional findings." (*In re J.K*. (2009) 174 Cal.App.4th 1426, 1433.) Thus, we must uphold the court's jurisdictional findings unless, after reviewing the entire record and resolving all conflicts in favor of the respondent and drawing all reasonable inferences in support of the judgment, we determine there is no substantial evidence to support the findings. (*In re Veronica G*. (2007) 157 Cal.App.4th 179, 185, citing *Monique T*., *supra*, 2 Cal.App.4th at p. 1378.) Substantial evidence is "relevant evidence as a reasonable mind would accept as adequate to support a conclusion"; it is "reasonable in nature, credible, and of solid value." (*In re J.K*., *supra*, 174 Cal.App.4th at p. 1433.)

"When a finding of fact is attacked on grounds that it is not supported by substantial evidence, the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the findings. [Citation.] . . . The reviewing court looks to the evidence supporting the successful party and must disregard any contrary showing. [Citation.] When two or more inferences can reasonably be deduced from the facts, we are without power to substitute our deductions for those of the trial court. The testimony of a single witness, even a party, is adequate to support the trial court's findings. [Citation.] All the evidence most favorable to respondent must be accepted as true, and that unfavorable discarded as not having sufficient verity to be accepted by the trier of fact. If the evidence so viewed is sufficient as a matter of law, we must affirm the judgment." (*In re Cheryl E*. (1984) 161 Cal.App.3d 587, 598 (*Cheryl E*.).)

Analysis

This case first came to the Department's attention in April 2011. At that time, Mother told the social worker that Child had been living with T.B. for two months, and that Mother and Child had been "chronically homeless," which contributed to stress in their relationship. The social worker reported that Mother focused on how their homelessness and her illness affected her and showed very little insight into how those issues affected Child. Mother told the social worker that she wanted Child to come home and "was hopeful about housing." She also agreed in writing to provide for Child's basic needs while he lived with T.B.

At the end of May 2011, Mother told the social worker that she had "not had a permanent living situation since 2008" and had been "couch surfing with her son except for six months" (January through July of 2010) when they lived in a family shelter. While she lived in the shelter, she worked with Families in Transition (FIT) but they were unable to find suitable housing.

In early June 2011, T.B. told the social worker that she had agreed that Child could live with her as long as Mother provided financial and medical support and that during the approximately three months that Child lived with her, the only support Mother provided was a transit card and $200, which "only covers about half of what he eats in a month . . . ."

The social worker spoke with Mother on June 7, 2011, shortly before child was taken into custody. Mother blamed her housing situation on "the system" and not her own actions. Mother reported that FIT had found her a studio apartment for $800 per month, which she turned down because her income was about $1,100 per month and she did not feel comfortable sharing a studio with her son. Mother had also refused an offer to rent a room for $500 a month, stating that she could not share a room with her son and

it was not good enough for them.[8] A representative of FIT reported that Mother had put up obstacles to finding a place to live. The social worker opined that Mother was not realistic about the cost of housing in the county and noted that Mother "does not have a reasonable plan for her son and expects him to live in the car with her . . . ." Both Child and T.B. told the social worker that Mother was "couch surfing" in the home of some elderly people who did not like Child and would not let him sleep inside their residence. Consequently, he would have to sleep in Mother's car. T.B. reported that during the time Child resided with her, Mother made no effort to find housing for herself or Child.

Child reported that Mother drank whiskey more than twice a day and acted drunk, but said that Mother only admitted to drinking "little amounts." Child also reported that Mother smoked marijuana "once in a while." (Mother initially denied alcohol and drug use, but then admitted that she used medical marijuana while on chemotherapy.) This evidence supports the inference that Mother was purchasing alcohol with money that should have been used for Child's support.

There was also evidence to support concern about Mother's mental health. Child reported Mother's mental state was deteriorating "due to what she's been going through," apparently referring to the cancer treatment and earlier motorcycle accident. Child and T.B. both reported incidents of Mother's erratic behavior, such as strewing Child's clothing over the driveway, and accelerating the car behind Child after they had argued. T.B. reported that one reason she could no longer allow Child to live with her was Mother's behavior, which was upsetting and frightening to T.B., her son, and Child. In early June 2011, Mother told the social worker that she and Child "need[ed] separation to deal with each of their issues, her mental health and physical health." The social worker expressed concerns about Mother's mental health based on her demeanor during their

[8] The record does not indicate whether this housing situation included access to common living areas or kitchen facilities.

interviews and telephone contacts; Mother presented as nervous and upset, angry and crying.

Citing *Hansen v. Department of Social Services* (1987) 193 Cal.App.3d 283 (*Hasnen*), and *David B. v. Superior Court* (2004) 123 Cal.App.4th 768 (*David B.*), Mother argues that "[h]omelessness alone is not grounds for dependency jurisdiction." And citing *In re G.S.R.* (2008) 159 Cal.App.4th 1202 (*G.S.R.*) and *Cheryl E.*, *supra*, 161 Cal.App.3d 587, Mother argues that poverty alone is not grounds for dependency jurisdiction.[9] In *G.S.R.*, the record strongly suggested that the only reason the father had not obtained custody of his two sons was his financial inability to obtain suitable housing. (*G.S.R.*, *supra*, at p. 1212.) The court noted that "poverty alone, even abject poverty resulting in homelessness, is not a valid basis for assertion of juvenile court jurisdiction. As the Legislature expressly stated in section 300, subdivision (b), 'no child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. . . .' Put differently, indigency, by itself, does not make one an unfit parent and 'judges [and] social workers . . . have an obligation to guard against the influence of class and life style biases.' " (*Ibid.*, citing *Cheryl E.*, at p. 607.)

This case is distinguishable from *G.S.R.* and *David B.*, where the fathers at all times sought the custody of their children, visited them regularly, and complied with the social services agency's requirements, but had difficulty providing appropriate housing. (*G.S.R.*, *supra*, 159 Cal.App.4th at pp. 1205-1206, 1209 [order terminating parental rights reversed; boys resided with paternal grandmother and father saw them nearly every day;

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[9] *Hansen* is not a dependency case per se. In *Hansen*, the court addressed two consolidated cases: a taxpayer's mandamus action to compel the Ventura County Department of Social Services to assist homeless AFDC families and a class action to compel the department to provide emergency shelter or other welfare services to such families. (*Hansen*, *supra*, 193 Cal.App.3d at pp. 286-287.) *Cheryl E.* was an appeal from an order rescinding the mother's relinquishment of her child on the grounds of fraud and undue influence and an order terminating the father's rights pursuant to section 232. (*Cheryl E.*, *supra*, 161 Cal.App.3d at p. 594.)

agency never provided services to assist with finding affordable housing]; *David B.*, *supra*, 123 Cal.App.4th at pp. 772-773, 792-793 [order referring case for permanency planning reversed; father worked, visited regularly, & did everything agency required during reunification; agency never told father he would have to move to obtain custody].)

More than merely failing to provide support, Mother affirmatively stated that she would not support Child. She reneged on her promises to T.B. and the Department that she would support her son. During the months that Child lived with T.B., Mother made no effort to find a living situation where both she and Child would be welcome. Similarly, between detention and the contested jurisdiction hearing, there was no evidence of efforts by Mother to find suitable housing for herself and Child.

Contrary to Mother's assertions, and unlike *G.S.R.*, the juvenile court did not base its jurisdictional finding on poverty or homelessness alone. As we have noted, the petition alleged multiple grounds for jurisdiction, including Mother's failure to provide food, clothing, shelter, and support; and Mother's alleged mental illness and substance abuse, as evidenced by Child's statements and Mother's erratic behavior. Finally, although the court had ordered weekly visitation at the time of detention and at each subsequent hearing, there was no evidence that Mother visited Child or availed herself of the opportunity to participate in joint counseling with him. Thus, there was substantial evidence to support the court's order on jurisdiction, and the conclusion that the order was not based solely on homelessness or poverty.

As we have noted, the purpose of a dependency proceeding is not to prosecute the parent, but to protect the child. Rather than focusing on the need to protect and support her child, Mother appears to believe that Child should help to support her. Mother's lack of insight on this point is illustrated by the assertion in her appellate brief that Child "is now 16 years of age. [He] could obtain a work permit, find employment preparing orders at a fast food outlet, packing groceries at a food chain, or other such work so that he could contribute to the living expenses of the family. Doing so might permit [Child] to

embark on manhood knowing that he did not fail his mother at such a time. In the long run, such a course might do more toward forming [Child] as a responsible adult than would fulfillment of his desire to play the guitar." While age appropriate employment may indeed provide valuable experience for a teen, the needs of the child must not be subordinated to those of the parent.

DISPOSITION

The order on jurisdiction and disposition is affirmed.

_____
GROVER, J.*

WE CONCUR:

_____
PREMO, ACTING P.J.

_____
BAMATTRE-MANOUKIAN, J.

*Judge of the Monterey County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.